F I L E D
AUG 15 1972
William G. Sharp
County Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

INGLEWOOD RESIDENTS', etc., Plaintiffs, vs. CITY OF LOS ANGELES, et al., Defendants.	No. 646,875 MEMORANDUM RULING: RECONSIDERATION OF ACTION TAKEN ON THIRD AMENDED COMPLAINT

This memorandum is intended as a guide through the complexity of the pleading under consideration, the extensive proceedings already had in this case, and the corrections in these proceedings now made necessary.

This action began January 27, 1969 with the filing of the original complaint on behalf of a large number of individuals and Inglewood Residents' Protective Association, hereinafter "the Association." Relief was sought on account of the operation by the defendant City of Los Angeles of its International Airport, and particularly its recently opened north runway.

By the spring of 1972 the defendant City had secured orders terminating the action as to numerous plaintiffs, including the Association, who did not claim to be owners of real property, and sustaining demurrers to all counts other than 2, 11 and 15 of the third amended complaint as amended and supplemented.

Some of these rulings are now seen to be erroneous in the light of the opinion of the California Supreme Court in Nestle vs. City of Santa

Monica, 6 c. 3d 920, filed April 28, 1972.

After Nestle counsel herein were invited to join with the court in a review of the entire case, testing the rulings heretofore made against the Nestle opinion. Plaintiffs' counsel have indicated an intention to stand on the third amended complaint as amended and supplemented (hereinafter "the complaint"), and by oral motion have requested its reinstatement in its entirety including reinstatement of the parties heretofore barred as plaintiffs. Defendant City urges that previous rulings stand except as they are necessarily and currently modified by Nestle, and further moves for judgment on the pleadings in favor of the City upon the first ten causes of action. By this motion the City would have the court deny class representation in respect to the claims of the plaintiffs.

QUESTIONS PRESENTED

The following must now be determined:

1. Whether any relief sought has been improperly denied to all plaintiffs, or any group of plaintiffs.

2. Whether any relief available to plaintiffs may be enforced by class action, embracing parties not named as plaintiffs herein; and

3. Whether any former plaintiffs should be restored to their former status as such.

RULING

I have reached the following conclusions:

1. Previous rulings have improperly denied relief upon causes of action based upon nuisance (count 12), trespass to property, (count 14); assualt resulting in personal injuries, (count 16); and negligence resulting in personal injuries, (count 17). For reasons set forth later, I am also allowing

the case to proceed for certain injunctive relief, (count 18).

2. The ruling dismissing the Association from the action was proper.

3. None of the relief available to any plaintiff may be the subject of class action.

4. The individual plaintiffs heretofore dismissed from this case because they did not reveal ownership of real property interest ought to be reinstated as parties, and permitted to establish any rights they have under the causes of action remaining in the complaint. The order of June 29, 1971 is set aside so that this may be accomplished.

5. All other rulings remain.

NATURE OF THE PLEADING

The complaint contains nineteen causes of action stated on behalf of these three categories of plaintiffs.

a. The Association, which describes itself as a non-profit corporation formed to take certain actions for its members and the residents and property owners of the City of Inglewood. (p.5). Othern than references to "plaintiffs" having properties or property interests which have been damaged, there seems to be no contention that the Association owns any property or interest therein in the affected territory in its own right.

b. "Homeowners" are alleged to be plaintiffs who own real property in Inglewood. (p.2).

c. "Residents" are alleged to be plaintiffs who have a "possessory interest" in real property in Inglewood. (p.2)

Both homeowners and residents are named in the caption of the original, first amended, second amended and third amended complaints, references being made thereto. Such individuals who may not

be sui juris appear by a guardian ad litem.

The complaint contains extensive allegations designed to establish the Association, its chief executive officer (Mr. Berardi) and president (Mr. Patterson) as well as unnamed officers and directors of the Association as representatives of a class consisting of other property owners and residents of Inglewood who may be unnamed in this suit. (ps. 6&7). The class would apparently embrace 94,000 residents/homeowners interested in 30,000 parcels of real property (p.6).

The structure of the complaint is this: Of its nineteen causes of action, numbers ten through eighteen are attempts to state grounds for relief for individual grievances under differing theories. Numbers one through nine attempt to state the same grounds for relief each for an alleged class, and by way of class action relief. Thus, the counts may be paired as one and ten, two and eleven, etc. The nineteenth cause of action would have the court declare by its judgment whether a class exists as to which class relief is available. (Paragraph 127, p. 62a).

CLASS ACTION IS NOT AVAILABLE

Before embarking upon the required count by count analysis it must be recognized that class treatment may not be afforded simply because it appears to be an attractive means of attempting to cure a community's environmental problems and annoyances. It appears most commonly used to redress ill treatment due to fraud or contract breach; (Darr vs. Yellow Cab Co., 67 Cal. 2d 695; Vasquez vs. Superior Court, 4 Cal. 3d 800; Collins vs. Rocha, 7 Cal. 3d 232; Witkin, "California Procedure" 2d Ed. p. 1860) and is most readily employed in cases where the damage to each individual is minimal: one purpose of class treatment being discouragement of malefactors who otherwise could escape giving redress. Class actions are not suitable for personal injury actions (Diamond vs. General Motors Corp.,

20 C.A. 2d 374) or where individual claims are substantial enough to justify separate actions or require individual proof of some issue (Diamond, supra, p. 380; Slakey Brothers, etc., vs. Parker, 265 C.A. 2d 204; Los Angeles Fire, etc., vs. Rodgers, 7 C.A. 3d 419.) Of course, the party claiming to represent the class must belong thereto; this rule prevents the Association from attempting such representation (Greater Westchester Homeowner's Association, Inc., vs. City of Los Angeles, 13 C.A. 3d 523.) Restraint as to such usage is understandable; the courts are reluctant to appoint legal counsel for persons not even in court; and seem to recognize that persons with substantial claims in their own right may be expected to take action on their own behalf, joining with other persons injured by consolidation of cases if necessary. (Slakey, supra; p. 210, Daar, supra; p. 715.)

In reconsidering the previous rulings, the availability of class action will be considered separately as to each form of relief sought.

DEMURRERS RECONSIDERED

Declaratory Relief Designed to Show Acts Unconstitutional Count 10 (p.47) and Count 1 (p.5)

These counts would have a declaration of the rights of plaintiffs under numerous California laws and federal requirements. (See prayer pages 62b through 67.) These counts do not state facts sufficient to constitute causes of action in the individual plaintiffs; a fortiori, they do not so state as to any class. The previous rulings sustaining demurrers to these counts without leave to amend must stand.

Furthermore, relief under other causes of action is now available to the individual plaintiffs, making unnecessary any resort to declaratory judgment; (General of America Insurance Co., vs. Lilly, 258 C.A. 2d 465 at 471.)

Declaratory Relief as to Class Delineation
Count 19 (p. 61)

This court seems to seek a delineation by judgment, first as to whether there is a class of persons who may properly be represented as a class on account of the City's actions and, second, the area and identity of such class. The general demurrer was previously sustained without leave; this ruling will stand.

Inverse Condemnation
Count 11 (p. 52) Count 2 (p. 18)

Demurrer to Count 11 has heretofore been overruled; as for Count 2 which purports to set forth claims on behalf of a class for inverse condemnation, the only demurrer filed by the City appears to be the general one to the entire complaint (Paragraph XIX, p. 4 demurrer to third amended complaint) which was overruled. It is doubtful that such demurrer can serve to attack this count, (Witkin; "California Procedure" 2d Ed. p. 2416.) Therefore, Count 2 is at this moment an existing cause of action to which answer has been filed. The City challenges the availability of class action for inverse condemnation by its motion for judgment on the pleadings which I treat as a general demurrer. It is clear to me that class action does not lie. Inverse condemnation is that remedy by which persons deprived of their property or rights therein, usually but not always by government action, may be compensated for their specific property loss. The remedy does not lend itself to securing a general award for community damage, or to cure some ill cuased to a group by a broad damaging or taking. In inverse condemnation each party wronged is required to prove the nature and extent of any wrong to specific property or property rights. While it may be that each property has been "taken" to some txtent by the easement here complained of, the nature of the taking must differ not only as to each parcel but as to

each flight of plane or directional use of the runway. Furthermore, plaintiffs do not seek trivial awards; the complaint alleges each parcel and each possessory interest therefore have been damaged at $15,000 (p. 22 & 56). The motion to dismiss Count 2 is granted.

Nuisance
Count 12 (p. 56) Count 3 (p. 22)

These counts allege the maintenance by the City of a nuisance within the meaning of California Civil Code Section 3479 and seek abatement of the nuisance by injunction as well as $15,000 per parcel of property and $15,000 for each plaintiff, presumably for personal damages suffered by plaintiffs (p. 68.) Nestle clearly holds that actions for nuisance lie against cities for damages caused thereby. I see nothing in Nestle allowing injunction proceedings restraining a city operating an airport serving interstate commerce. The opinion states the action is to recover for property and personal injury damages (p. 924.) There are at least two good reasons for denying such restraint. Plaintiffs now have adequate remedies at law (Triangle Ranch, Inc. vs. Union Oil Company, 135 C.A. 2d 428, 438; Witkin; "California Procedure" 2d Ed. p. 1508;) and injunctive restraint would not be in the public interest (Loma Portal Civic Club vs. American Airlines, Inc., 61 C 2d 582, 590; Witkin, supra, p. 1511.) Therefore, guided by Nestle, the order sustaining demurrer to Count 12 is set aside so far as it seeks remedy for individual plaintiffs in damages for the claimed nuisance. The ground of demurrer to these causes of action is the general one of failure to state sufficient facts to constitute a cause of action for nuisance. The demurrer seems not to attach the relief by way of injunction sought in these counts. Therefore, Count 12 will be restored, but unless otherwise persuaded I do not intend to grant relief under

Count 12 of an injunctive nature.

I see no reason to consider seriously the allowance of class action relief for the damage allegedly suffered by way of property loss or personal injuries. The property damage is alleged to be so substantial as to justify individual action by each wronged property owner; I do not believe the theory of class action should be extended to embrace personal injury claimants who may be damaged in the manner indicated. The ruling sustaining the demurrer to Count 3 shall stand.

Unconstitutional Damaging Without Compensation
Count 13 (p. 59) Count (p. 26)

These counts appear to seek damages at the rate of $15,000 for each parcel of property and $15,000 for each individual plaintiff on the theory that although the City had illegally appropriated property rights and subjected persons in Inglewood to annoyances, no appropriate remedy lies therefor under eminent domain (inverse condemnation) or otherwise. It appearing that counts enabling plaintiffs to recover under several legal theories will remain after this order, the previous ruling sustaining demurrers to these counts without leave shall stand.

Trespass
Count 14 (p. 59) Count 5 (p. 28)

These counts appear to seek damages on account of trespass upon each parcel of property represented by plaintiffs' ownership or possessory interest, in the same substantial measure. If Nestle shall permit recovery of damages for negligence and nuisance, no reason occurs to me why damages may not be awarded for trespass by use of air easement by a city. Noise and vibration may constitute trespass if intentionally inflicted and due to negligence, recklessness or even extra-hazardous activities (Gallin vs. Poulou, 140 C.A. 2d 638; McNeill vs. Redington, 67 C.A. 2d 315;

Smith vs. Lockheed, 247 C.A. 2d 774 at 784.) The allegations of these necessary elements will withstand scrutiny under a general demurrer. The ruling, therefore, sustaining demurrer to Count 14 is set aside and that demurrer overruled. The ruling sustaining the demurrer to Count 5 shall stand; the relief not being available to class action. (See comment on Count 12.)

Breach of Contract
Count 15 (p. 59) Count 6 (p. 28)

Demurrer to Count 15 was heretofore overruled; that ruling will stand. The demurrer to Count 6 was sustained; that ruling shall stand, it not appearing that this remedy is available to class action. (See comment to Count 12.)

Assualt
Count 16 (p. 60) Count 17 (p. 31)

These counts state the infliction of an assualt upon individuals occurring on each aircraft flight. I do not detect any claim for property damage. Nestle, permitting actions for negligence and nuisance, would certainly appear to permit actions for personal assualt. As against a general demurrer sufficient intent is pleaded in the allegation of commission of unlawful acts (Lopez vs. Surchia, 112 C.A. 2d 314, 318.) Therefore, the sustaining of the demurrer to Count 16 is set aside and that demurrer is overruled. The sustaining of the demurrer to Count 7 shall stand; the remedy for assualt to persons in this manner is not available to class actions.

Personal Injuries - Negligence
Count 17 (p. 60) Count 8 (p. 33)

The remarks made as to 16 and 7 apply here, the sustaining of the demurrer to Count 17 is set aside and that demurrer overruled. The sustaining of the demurrer to Count 8 shall stand.

Injunction
Count 18 (p. 60) Count 9 (p. 37)

Here the plaintiffs would have the court compel the City to adopt and enforce a number of procedures designed to alleviate the nuisance of airport operations by threat of terminating the City's operations of International Airport by injunction. As stated under discussion of Counts 12 and 3, which charge maintenance of a nuisance, I seriously doubt the availability of injunctive relief here, but question whether denial is proper at the pleading level and upon general demurrer. Therefore, the order sustaining demurrer to Count 18 is set aside and that demurrer overruled. The sustaining of demurrer to Count 9 shall stand; if any such relief is available it can be obtained through the individual plaintiffs.

RESTORATION OF PLAINTIFFS HERETORE DISMISSED

This action has been terminated as to two types of plaintiffs; the Association and plaintiffs who did not return interrogatories disclosing ownership of real property. The summary judgment in favor of the City and against the Association appears to be proper and that judgment is being filed concurrently herewith. All individual persons who have been dismissed from the case should be afforded additional opportunity to reveal by appropriate answer to interrogatories the extent to which their possessory rights in real property or personal rights may have been injured or damaged by the causes of action restored to the complaint.

Minute Order accomplishing the foregoing is being entered. The action will now proceed as to Counts 11, 12, 14, 15, 16, 17 and 18. The City shall have twenty days from this date to supplement its answer heretofore filed or file an amended answer. If the court's aid is needed in framing additional interrogatories to plaintiffs, counsel will please apply. DATED: 8/15/72

/s/ Stevens Fargo, Judge